



## Africa All Party Parliamentary Group

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### Response to the Export Credit Guarantee Department Consultation on “Changes to ECGD’s Anti-Bribery and Corruption Procedures introduced in December 2004”

16<sup>th</sup> June 2005

*In response to the Question:*

*“Do the changes made to the ECGD’s anti-bribery and corruption procedures in 2004 have the effect of ensuring that, so far as practicable, (1) taxpayers’ money is not used to support transactions tainted with bribery and/or corruption; and (2) an undue burden is not placed on exporters and/or banks?”*

#### *Introduction*

The Africa APPG is a cross party grouping of Parliamentarians from both Houses of Parliament. It is funded independently from Government<sup>1</sup>. This response was drafted by the Group’s secretariat in consultation with the Executive Committee. This response is not an exhaustive analysis of all the issue but looks at those changes to the procedures that have been brought to the Group’s attention.

In March 2005 the Africa APPG Published a report entitled “*The UK and Africa in 2005: How Joined Up is Whitehall*”<sup>2</sup> The rationale for producing such a report was that the UK Government had committed to prioritise Africa and African development in 2005. The Prime Minister also committed UK Government to the package of recommendations made in the report of the Commission for Africa, when the report was launched at the British Museum in March. In the Africa APPG’s report concern was raised about the changes made to the anti-bribery and corruption procedures in December 2004. The report highlighted the problem of whether these changes were ‘joined up’ with wider government priorities.

Corruption is very damaging to development efforts. It is also extremely damaging to business and business confidence. It increases business costs and significantly heightens risk. The report of the Commission for Africa made clear that corruption needs to be tackled both within Africa and outside it including by cracking down on the involvement of UK nationals and companies in the bribery of foreign public officials (as outlawed in the UK in the 2001 Anti-Terrorism crime and Security Act) and other corrupt practices. The UK has committed to take a lead within the international community on all of these issues through its unconditional endorsement of the recommendations of the Commission for Africa – not to follow this in the export credit sector would completely undermine UK policy and lead to a loss of trust of the UK Government’s depth of commitment.

## *Wider Context*

In responding to the Consultation the Africa APPG notes that relevant international guidelines do exist which should also inform the ECGD's guidelines:

- OECD Action Statement on Bribery and Officially Supported Export Credits (and the *enhanced* Action Statement)
- OECD Guidelines on Multi-national Enterprises
- UN Convention against corruption
- The UN Global Compact
- The 2005 World Economic Forum's "Partnering Against Corruption Principles for Countering Bribery"
- Transparency International's Business Principles for Countering Bribery

The Africa APPG also notes the ECGD's Business Principles which include the following commitments:

*We will promote a responsible approach to business and will ensure our activities take into account the Government's international policies including those on sustainable development, environment, human rights, good governance and trade.*

*We will be open and honest in all our dealings and will expect the same from others.*

*We will, in developing our services, consult widely and take account of the legitimate requirements and expectations of our customers and other interested parties<sup>3</sup>.*

## *Agents*

The Africa APPG appreciates that agents can be very useful in international transactions and business deals but does not concur with the view that corporations who choose to employ agents to act on their behalf should not be responsible to ensure, as far as they possibly can, that these agents are not engaged in corrupt practices. Companies receiving UK export credit should not allow agents to tarnish their reputation or indeed, by extension, the UK's reputation.

As was stated in the Africa APPG's March 2005 report, it is precisely through the use of these agents that companies have been able to turn a blind eye to corrupt practices, carried out on their behalf and often with their tacit but not explicit approval, without falling foul of the law. Such practices make a mockery of attempts by the UK Governments and by African Governments to crack down on corruption and the ECGD must take all necessary measures to guard against this.

It is as much in ECGD's interests to ensure that the projects it underwrites are successful as it is in the customers interest. It is not unreasonable to ask customers to provide names and addresses for agents to ECGD, on a confidential basis.

Since the size of projects and contracts vary so much using a percentage cut off point for disclosure of agents commission payments is meaningless. The reduction of the requirements for disclosure of agents commission in December 2004 would reduce the onus on companies to ensure agents are not engaging in corrupt practices on their behalf and will therefore increase the likelihood that tax payers money is used to support transactions tainted with bribery and corruption.

UK Trade and Invest provide information on agents as a commercial service for companies. UK Trade and Invest should ensure that the agents they recommend or list are signed up to anti-corruption principles and the ECGD should encourage its customers to work only with those agents who are signed up. This system would act as a register of agents with good records and a commitment to anti-corruption.

#### *Defining "...to the best of our knowledge and belief"*

The use of the term "to the best of our knowledge and belief" has to be more robustly defined. The December 2004 definition is very weak and does not require customers to make any enquiries or checks whatsoever. It is not unreasonable to expect companies to make enquiries about individuals and organisations that a company works with, before signing a contract. This is basic good business practice. Indeed because of the Foreign Corrupt Practices Act (USA) any UK company listed on the US Stock exchange will have to undertake and document due diligence checks on all business partners including agents, subsidiaries, subcontractors and joint venture partners. For the ECGD not to insist on this same level of due diligence leaves the UK well behind the USA in tackling its role in international corruption and therefore undermines wider UK Government prioritisation of good governance and development in Africa.

#### *Audits*

The Africa APPG believes that the recommendation by the Trade and Industry Select Committee that audits should be conducted on a spot check basis, not with 5 days notice should be implemented. In this way the ECGD can better ensure that UK tax payers' money is not being used to support corrupt practices.

#### *Penalising corruption*

The Africa APPG believes that sanctions or fines are needed to ensure that companies who break the rules face an effective penalty. If the ECGD does not already have the power to impose such sanctions this should be enabled through legislation if necessary. This would act as a deterrent to ensure that UK tax payers' money is not misused and also provide a method of retrieving such misused funds. Any company that has been proved to have engaged in or wilfully ignored corrupt practices carried out by any of its partners should be banned from receiving any export credit in the future.

#### *A burden on business?*

The Africa APPG believes that in the long run a reduction in corruption can only be good for UK businesses who operate in developing countries. It would significantly reduce transactions costs and risk. Implementing higher standards now will not place an undue burden on exporters and/or banks but on the contrary will benefit them over the longer term.

Furthermore, a number of these guidelines have been implemented by other export credit agencies and have been shown to be operational. For example, disclosure of agents commission (whatever proportion of the contract) is required by the Dutch export credit agency. Because of the relatively robust Foreign and Corrupt Practices Act in the USA companies and any other companies listed on the US stock exchange

have been taking due checks on individuals and organisations they work with overseas since it was enacted in 1977. This indicates that US companies have not been placed at a competitive disadvantage by this requirement.

### *UK Leadership*

The UK need to take the lead in getting a strong OECD Action Statement on Combating Bribery in Officially Supported Export Credits later this year. A strong and comprehensive action statement is needed which would bring together the higher standards for all OECD countries. With a push from the UK and commitment from the ECGD there is a real opportunity for a much strengthened Action Statement which would provide pressure for other ECAs to follow suit and therefore benefit the ECGD and its customers.

The UK will find it difficult to take on any sort of leadership role if the weaknesses in the December 2004 Anti-bribery and corruption procedures are not addressed.

The UK needs to bring a comprehensive and strong anti-corruption bill to Parliament as soon as possible. The role of the ECGD in ensuring high levels of anti-bribery and anti-corruption standards amongst UK companies could be included in this legislation.

### *Summary*

The Africa APPG believes strongly that UK Business investments in Africa could provide a strong impetus to support economic development. However, these investments should not be tarnished with corruption as this not only damages the UK's reputation and undermines wider development efforts but also increases business costs. As African development is a top priority for the UK Government this year the ECGD must be seen to be leading the way with best practice for export credit agencies. All businesses will benefit from a reduction in corruption in the long run and the requirements discussed will not place an undue burden on UK businesses who want the support of UK taxpayers.

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<sup>1</sup> For more information about the Africa APPG please check its entry at <http://www.publications.parliament.uk/pa/cm/cmparty/050411/memi04.htm>

<sup>2</sup> A PDF of this report is attached separately

<sup>3</sup> ECGD Business Principles [http://www.ecgd.gov.uk/index/pi\\_home/pi\\_bp.htm](http://www.ecgd.gov.uk/index/pi_home/pi_bp.htm)